

Chapter 14.54

OCCUPANCY ABOVE OR BELOW PUBLIC PROPERTY

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14.54.010 Definitions.

For the purpose of this chapter, the following definitions shall prevail:

Owner shall mean and include the record owner of the fee simple of property or the lessee for a term of twenty-five years or more of such property, or purchaser in possession under land contract. **Story** shall mean the distance between the lower surface of any ceiling and the lower surface of the ceiling immediately above or below it, but if the distance between such ceiling surface and the floor immediately below is more than sixteen feet, such distance shall be considered to be not less than two stories in depth. **Structure** shall mean and include, but not be limited to, vaults, underpasses, areaways, basements, liquid storage tanks, boilers, and cantilevered areas of buildings. (Ord. 13212 § 11; September 28, 1981).

14.54.020 Permit Required.

It shall be unlawful for any person to use any space underneath or above the surface of any street, alley, sidewalk, or other public ground within this city, or to construct any structure thereunder or thereover unless approved by the city by a permit issued as a privilege. No permit shall be issued except to the owner of the lot or land adjacent to the space sought to be used, and no permit shall be issued unless authorized by action of the City Council. A building permit shall also be required from the Building Inspector if a permit would be required under the ordinances of the city to construct a similar structure upon private property. (Ord. 13212 § 12; September 28, 1981; prior Ord. 8782 § 2; July 26, 1965; Ord. 7255 § 2; August 8, 1960).

14.54.030 Application for Permit.

Applications for such permit shall be made to the Department of Public Works and Utilities, and such application shall be in writing stating specifically the space desired, its length, breadth and depth, and the use intended to be made thereof, or the structure to be built therein; and the Department of Public Works and Utilities shall then refer said application to the City Council. (Ord. 16951 §109; March 11, 1996; prior Ord. 7255 § 3; August 8, 1960).

14.54.040 Bond and Public Liability Insurance.

Every applicant for such permit shall file with the application required, a continuing bond in the sum of not less than \$5,000.00, but in the event that the City Council in the resolution authorizing the permit shall fix a different sum, then a bond for such sum so fixed shall be substituted and filed with the application. All bonds and sureties shall be approved by the City Attorney before such permit becomes effective. All bonds shall be conditioned that the person to whom such permit shall be issued and such person's heirs, successors, or assigns shall strictly comply with all applicable laws and regulations and all conditions of the permit and which shall save and keep the city free and harmless from any and all loss or damages or claims for damages arising from or out of the use of the space or structure therein mentioned, and for the maintenance of the street, alley, sidewalk, or other public way in such condition that said street, alley, sidewalk, or other public way shall at all times after such structure is completed or such space is covered, be safe for the public use; for the full and complete protection of the city against any and all litigation growing out of the granting of such permit or anything done under such permit and for the removal of any structure permitted in the public space by such permit at the sole expense of the permittee and the permittee's heirs, successors, or assigns; for the faithful performance and observance of all the terms and conditions of this chapter; and where the permit is given to use space which under this chapter is taxed, such bond shall also be conditioned for the prompt and full payment of the compensation required by this chapter, or any other ordinance required to be paid during the period said permit shall be outstanding. Following the issuance of such permit and as long as the use continues or as long as the structure exists in such public space, the owners of such property from time to time shall also be responsible to the city for the performance of all of the conditions of said bond above described.

Whenever the City Council shall be of the opinion that the surety on such bond given for such permit issued hereunder has become insufficient and shall so declare by resolution, a new bond for such permit shall thereupon be filed with a new surety to be approved by the City Attorney.

In addition to the bond, the applicant shall be required to:

(a) At all times maintain public liability insurance in the form of a commercial or comprehensive general liability policy, or an acceptable substitute policy form as permitted by the City Attorney, with a minimum combined single limit of \$500,000.00 aggregate for any one occurrence. The coverages required herein shall be subject to review and approval by the City Attorney for conformance with the provisions of this section;

(b) At all times keep on file with the City Clerk a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the City Attorney for conformance with the provisions of this section evidencing the existence of valid and effective policies of insurance naming the city as an additional insured for the coverage required by subsection (a) of this section, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, the deductibles or self-insurance retainers of each policy, and a copy of an endorsement placed on each policy requiring thirty day's notice by mail to the City Clerk before the insurer may cancel the policy for any reason, and upon request of the City Clerk or the City Attorney, a copy of any endorsements placed on such policies or the declarations page of such policies. Any termination or lapse of such insurance shall automatically revoke any permit issued pursuant to this chapter. (Ord. 15654 § 11; July 9, 1990: prior Ord. 13212 § 13; September 28, 1981: Ord. 12139 § 4; November 7, 1977: Ord. 8853 § 1; October 25, 1975: Ord. 8760; June 28, 1965: Ord. 7255 § 4; August 8, 1960).

14.54.060 Interference with Sewer, Gas, or Water Pipes.

No person shall ever use the space under any such street, alley, or public way in such manner as to interfere with any wastewater collector, gas, water, or any other public works or utilities lawfully in such street, alley, or other public way unless by consent of the City Council especially granted by resolution; and no such permit shall be granted until the applicant therefor has deposited with the Department of Public Works and Utilities a sum of money equal to the estimated cost prepared by the Department of Public Works and Utilities to defray the cost and expense of removing, replacing, and relaying such wastewater collector, gas, water pipes, or other public works or utilities, and making the necessary connections therewith. Each and every applicant disturbing any such wastewater collector, gas, water pipes, or other public works or utilities, shall, within ten days after so disturbing it, restore the same to such condition as will meet with the approval of the Department of Public Works and Utilities. When such wastewater collector, gas, water pipes, or other public works or utilities are so restored by said applicant, the sum so deposited with the Department of Public Works and Utilities shall be refunded to such applicant less any sums which may be necessary to defray any damages which might arise from such disruption. If such applicant shall fail to restore such wastewater collector, gas, or water pipes, or other public works or utilities within ten days after the same is disturbed, then the Director of Public Works and Utilities shall cause the same to be restored in a manner meeting with his/her approval, and the cost thereof shall be paid out of the sum thus deposited. (Ord. 16951 §167; March 11, 1996: prior Ord. 13212 § 15; September 28, 1981: Ord. 7255 § 6; August 8, 1960).

14.54.070 Revocation of Permit; Removal of Structure.

A permit issued under this chapter may be revoked by resolution of the City Council upon a finding by them of such fact and the giving of five days' written notice to such person by the City Clerk, for the following reasons:

- (a) Failure of the permitholder to pay the compensation required within ten days after the date for payment is due;
- (b) Failure or neglect of the permitholder to comply with the provisions of this chapter or any of the provisions of the Lincoln Municipal Code or provisions of the permit;
- (c) Failure to use the space for which the permit was granted for a continuous period of at least six months; or
- (d) Upon a determination by the city that the space for which the permit was granted is needed for public use.

Upon revocation of a permit, the permitholder shall forthwith remove or abandon the space for which the permit was granted, together with the removal of any structures at his/her own cost and expense and return that space to the City of Lincoln, free and clear of all structures or encroachments of any type, at no expense to the city. If said space is below ground, such space shall be filled to the satisfaction of the Director of Public Works and Utilities at the expense of the permitholder. If a removal, abandonment, or fill has been requested and the said removal, abandonment, or fill is not completed within six months after revocation of such permit, the City Council may cause such removal, abandonment, or fill to be so done, and the costs of such work shall become a lien against the property of the permitholder. (Ord. 16951 §110; March 11, 1996: prior Ord. 13212 §16; September 28, 1981: Ord. 7255 §7; August 8, 1960).

14.54.080 Application of Chapter: Exceptions.

The provisions of this chapter shall apply to all uses of any space under or over the public space where said use involves the construction of or excavation for structures to be placed in that space. The provisions of this chapter shall not apply to public utilities located above or under the public space, the use of street or sidewalk areas during construction work occurring on adjacent property and for parking of vehicles within the sidewalk space, balconies, appendages, marquees, footings, and awnings provided for in the Lincoln Municipal Code, skywalks, sidewalk cafes, or signs for which a permit has been issued under Title 22 of the Lincoln Municipal Code. (Ord. 13212 § 17; September 28, 1981: prior Ord. 7255 § 8; August 8, 1960).

14.54.090 Rental Fee for Space.

Every person, firm, or corporation owning and maintaining any building projecting over the public street or sidewalk permitted as a privilege under the terms of Sections 14.54.010 through 14.54.080, upon a finding by the City Council that such building is to be used for a parking facility offered to the public and where such facility is located in the B-4 Business District, shall pay to the city an annual rental for the use and occupancy of the space over such public street or sidewalk occupied by such structure, which rental shall be as follows:

If such structure over the public street or sidewalk is one story or less in height, a minimum of fifty cents per square foot of floor space over the public street or sidewalk so used; and if such structure over the public street or sidewalk is over one story in height, an additional fifty cents or more per square foot of floor space over the public street or sidewalk for each additional story.

For every other use of space above or below public space permitted as a privilege under the terms of this chapter, the following annual rental fee shall apply:

For each story above or below the surface, the fee shall be fixed at one percent of the square foot value, as last fixed by the Board of Equalization, of the lot directly abutting such use, multiplied by the square footage of the use of space, or, if more than one lot abuts such use, one percent of the average of the square foot value of the lots directly abutting such use, as last fixed by the Board of Equalization, multiplied by the square footage of the use of space.

If such use of space involves utilization of the surface by the applicant, the fee for such surface use shall be fixed at ten percent of the square foot value, as last fixed by the Board of Equalization, of the lot directly abutting such use, multiplied by the square footage of the use of space, or, if more than one lot abuts such use, ten percent of the average of the square foot value of the lots directly abutting such use, as last fixed by the Board of Equalization, multiplied by the square footage of the use of space. This fee shall be in addition to the fee for each story if the use is for surface space as well as for stories above or below the surface. (Ord. 13395 § 1; June 1, 1982: prior Ord. 13212 § 18; September 28, 1981: Ord. 7318; October 17, 1960).

14.54.100 Rental Due Date; Collection.

All payments made under the provisions of this chapter shall be made to the City Treasurer and he/she is the collector thereof; and said rentals shall be due and payable on the first day of October of each year; provided, however, if the permit is issued for such space after the first day of October, the amount of the initial payment shall be prorated from the date when such permit is issued to the first day of October of the next year, and payments shall be due and payable on October 1 thereafter.

Any such rent shall become delinquent on the first day of December of each year and such delinquent rent shall bear interest at the rate of one percent per month until paid, and if such rent is not paid for six months or more after such delinquent date, a penalty of five percent shall be added thereto, in addition to said interest. (Ord. 13212 § 19; September 28, 1981).